

Mandatory Terms and Conditions

The following terms and conditions are a part of the contract entered into as a result of this solicitation:

1. PUBLIC INFORMATION

Offeror's should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

2. INDEMNIFICATION

The State shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

3. NON-HIRING OF EMPLOYEES

No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this contract.

4. CONTINGENT FEE PROHIBITION

The contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

5. MARYLAND LAW PREVAILS

The provisions of this contract shall be governed by the laws of the State of Maryland.

6. DISPUTES AND CONTRACT CLAIMS

- a. This contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2 of the Annotated Code of Maryland and COMAR (Code of Maryland Regulations) 21.10 (Administrative and Civil Remedies)

regarding resolution of contract claims (also called disputes).

- b. Unless a lesser period is provided by applicable statute, regulation, or this contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the contract, the Contractor must submit to the Procurement Officer a written claim containing the information specified in COMAR 21.10.04.02. A notice of claim or a claim not filed, in proper form, within the time limits stated herein shall be dismissed, as required by COMAR 21.10.04.02C.
- c. The Procurement Officer shall render a written decision on all Contractor claims within 180 days of receipt of the Contractor written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. This decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of the receipt. The Procurement Officers decision shall be deemed the final action of the State.
- d. The Procurement Officers decision shall be final and conclusive unless the Contractor files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of said decision.
- e. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the Procurement Officers decision, order, finding, or interpretation.
- f. Contractor shall take all reasonable action to mitigate or to avoid costs or damages for which the State may be liable.
- g. A final decision of the Procurement Officer shall be prima facie evidence of the correctness of the decision. On any appeal from a decision of the Procurement Officer, the Contractor will have the burden of proof and the burden of going forward with the evidence on all issues, including the propriety of a termination for default.
- h. Contractor may not unilaterally "reserve his rights" to file any claims other than in strict accordance with contract requirements. Contractor's rights to additional compensation are contingent upon Contractor strictly following the notice and filing requirements of the contract.
- i. The submission of electronic protests and claims is prohibited, as provided in COMAR 21.10.02.02C and 21.10.04.02D and E.

7. NON-DISCRIMINATION IN EMPLOYMENT - AFFIRMATIVE ACTION

- a. Contractor agrees:
 - i. not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment;
 - ii. to include a provision similar to subsection (1) above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
 - iii. to post and to cause sub-consultants to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this section.
- b. Contractor shall be subject to and shall comply with all other requirements of Section 13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland, which are incorporated into and made a part of the contract.

Contractor shall comply with all other applicable Federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.

8. BID PROPOSAL AFFIDAVIT AND CONTRACT AFFIDAVIT

- a. Contractor must read and truthfully execute the Bid/Proposal and Contract Affidavit and return both with the fully executed copies of this Agreement. The provisions of the Bid/Proposal and Contract Affidavit are incorporated into this Agreement and Contractor shall comply with such provisions. Exhibits 1 and 2.
 - i. Contractor shall execute the Bid/Proposal Affidavit required by COMAR 21.05.08.07
 - ii. Contractor shall execute the Contract Affidavit required by COMAR 21.07.01.25.

9. TERMINATION OF CONTRACT FOR DEFAULT

If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of this contract, the State may terminate this contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the Contractor shall, at the State's option, become the State's property. If the damages are more than the compensation payable to the Contractor, the State can affirmatively collect damages. The term "damages" as used in this paragraph may include attorney's fees and litigation costs. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

10. TERMINATION FOR CONVENIENCE

The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. Except as provided in subsection b of this section 15, the State will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

11. RETENTION OF RECORDS - AUDITS BY THE STATE

- a. The Contractor and his subcontractors and suppliers at any tier shall retain and maintain all records and documents relating to this contract for three years after the later of (a) termination of all contracts awarded as a result of the auction to be performed under the agreement, or (b) final payment to the Contractor under this agreement, or (c) any applicable statute of limitations whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.
- b. If Contractor or his subcontractors or suppliers at any tier fail to retain for the period of time required by this section original documents used, made, or relating to the preparation or calculation of Contractors bid to the State or of bids, quotes or estimates of sub-consultants or suppliers at any tier, Contractor shall be entitled to no damages, compensation, or equitable adjustments for any claims based on calculations, assumptions, understandings, or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.
- c. In the event a claim is initiated by either party under section 11, Contractor and his sub-contractor or suppliers at any tier shall retain such books, papers, records and other documents until expiration of the aforesaid three-year period or until final, un-appealable resolution of the claim, whichever is later.

12. COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants:

- a. That it is qualified to do business in the State of Maryland, and that it will take such action, as from time to time hereafter, may be necessary to remain so qualified.

- b. That it is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this contract.
- c. That it shall comply with all Federal, State and local laws, ordinances and rules and regulations applicable to its activities and obligations under this contract.
- d. That it shall procure, at its expense, all licenses, permits, insurance and governmental approval, if any, necessary to the performance of its obligations under this contract.

13. SUSPENSION OF WORK

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State.

14. PRE-EXISTING REGULATIONS

The regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this contract are applicable to this contract.

15. CHANGES

- a. The Procurement officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract.
- b. Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.
- c. Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- d. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an

increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

- e. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the contracts resulting energy procurement.

16. INTELLECTUAL PROPERTY

- a. Contractor agrees to indemnify and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this contract.
- b. Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorney's fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph below.
- c. If any products furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

17. ANTI-BRIBERY:

The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the Federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the Federal government.

18. MINORITY BUSINESS:

- a. The Contractor adheres to the State of Maryland small and minority business policies.
- b. Minority business enterprises are encouraged to respond to this solicitation

19. MULTI-YEAR CONTRACTS

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

20. FINANCIAL DISCLOSURE

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

21. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

22. ARREARAGES

By submitting a response to this solicitation, a Contractor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of

Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

23. CONFIDENTIALITY

Contractor and its subcontractors and the officers, directors, partners, members, employees, agents, and representatives of Contractor and its subcontractors shall at all times maintain the confidentiality of all information provided to them by the State or by bidders participating in the auction procurement(s) to be conducted by the State as contemplated by this Agreement as required by Maryland law, including the General Procurement Law, Division II of the State Finance & Procurement Article of the Annotated Code of Maryland, and the State Procurement Regulations, Title 21 of the Code of Maryland Regulations.

24. DELAYS AND EXTENSIONS OF TIME

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor or his sub-consultants and suppliers including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of sub-contractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the sub-consultants or suppliers. Such time extensions will be granted only if the Contractor gives the State written notice of the delay and its cause within five (5) days after the existence of the delay is known or should have been known by the Contractor.

25. COST AND PRICE CERTIFICATION

- a. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
 - A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer
- b. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

26. SMALL BUSINESS

- a. Vendors interested in applying for a small business preference shall obtain a Bidder's Application form from the Department of General Services' Purchasing Bureau. A vendor that successfully meets the criteria identified in COMAR 21.01.02.01B(80) shall be designated as a small business and shall be included on the Department of General Services' small business vendor list.
- b. The Department of General Services shall use this list to identify those vendors that are small businesses and are eligible for a 5-percent price preference or a predetermined percentage preference to reflect different industry characteristics.

27. OPEN AUCTION FORUM

Pursuant to the State statute on auction bidding SF&P 13-111(e) this auction will open to the public for viewing. This provision will allow the amount of the bid to be viewable to the public. The bidder will not be revealed until all bidding has ended. A computer will be set up at the State Office Bldg. 301 West Preston Street – M10 conference room for public viewing.

28. SUBCONTRACTORS

The requirements and obligations of Contractor under the Contract shall be binding on subcontractors of Contractor and Contractor shall be responsible for all acts or omissions of its subcontractors. Nothing in the Contract Documents be construed to make subcontractors of Contractor intended beneficiaries of the Contract. No subcontractor shall have or make any claim directly against the State under the Contract.

29. BLANKET PURCHASE ORDER AS CONTRACT

- a. The provision applies to all procurement contracts procured by the Department of General Services except contracts for the procurement of architectural and engineering services for a price of greater than \$200,000.
- b. As used in this provision, "bid" refers to a bid submitted under competitive sealed bidding and to an offer submitted under competitive sealed proposals.
- c. As used in this provision, "bidder" refers to a bidder under competitive sealed bidding and to an Offeror under competitive sealed proposals.
- d. As used in this provision, "solicitation" means an invitation to bid, a request for proposals, or any other document requesting bids or proposals for procurement by the Department.

- e. The bidder's execution and submission of a responsive bid constitutes a promise by the bidder to perform the contract solicited by the Department in accordance with the terms and conditions stated in the solicitation. The bid shall be irrevocable for the period stated in the solicitation or for such longer period as the bidder and the Department may agree.
- f. Upon acceptance of a bid, the Procurement Officer may issue a Blanket Purchase Order ("BPO"), in a form to be determined by the Department, to the bidder accepting the bid and binding the bidder to a contract. The execution and issuance of a BPO by the Procurement Officer, subject to all necessary approvals, shall constitute acceptance of the bid and final award of the contract. The contract of the parties will be embodied in the contract documents, which shall consist of the executed BPO of the Procurement Officer, including all documents, terms, and conditions incorporated into those documents by the terms of the solicitation, the BPO, the bid, or by operation of law, and the executed bid of the bidder. If the Procurement Officer issues a BPO, at the option of the Procurement Officer it will not be necessary for the bidder to execute the BPO or any other form of contract or agreement. The Procurement Officer may require that the parties both execute a single document as the embodiment of the contract between the parties.
- g. the event of a conflict between provisions of the contract documents, the controlling provisions shall be, in the following order, those of:
 - i. The BPO
 - ii. The solicitation
 - iii. The Bid